In the Supreme Court of the United States

OCTOBER TERM, 1972

PEARCE JOHNSON, ET AL., PETITIONERS

v.

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

---

1. Petitioners brought an action in the United States District Court for the Western District of Texas, challenging the use of federal funds under the Land and Water Conservation Fund Act of 1965, 16 U.S.C. 460*l et seq.*, in the acquisition by Texas of Mustang Island off the coast of Texas for a state park. Petitioners allege that the acquisition of the island had been approved by the Secretary of the Interior in violation of the Land and Water Conservation Act and the regulations of the Bureau of Outdoor Recreation within the Department of the Interior.

Petitioner Johnson is the chairman of the Texas Parks and Wildlife Commission (which, with peti-

472-662—72

tioner Johnson dissenting, approved the acquisition) as well as the State Liaison Officer who, under the Bureau's regulations, was authorized to submit applications for federal funds. The other petitioners are citizens of Texas who have no direct interest in Mustang Island, but assert that the expenditure of state funds in the acquisition of the island will result in less funds being available for the purchase of other state parks in areas where they reside.

The district court ruled that petitioners have standing to maintain their suit, upheld their contention on the merits and enjoined the acquisition of the island with federal funds (Pet. App. D–1 to D–30). The court of appeals reversed, holding that petitioners lack standing (Pet. App. A–1 to A–10).

2. The decision of the court of appeals is correct, does not conflict with decisions of this Court or any other court of appeals and presents no question warranting further review. Neither petitioner Johnson nor the other petitioners have alleged personal injury sufficient to afford them standing under the standards recently developed in *Sierra Club* v. *Morton*, 405 U.S. 727, to challenge the federal approval of funds to acquire Mustang Island. Petitioner Johnson was simply outvoted on the Texas Parks and Wildlife Commission [1] and has not been deprived of any legally

[1] In contrast to *Coleman* v. *Miller*, 307 U.S. 433, there is no claim here that petitioner Johnson's vote in fact prevailed on the state Commission. And see *id.* at 464–465 (opinion of Frankfurther, J.).

protected rights;[2] the other petitioners have only a general interest in the expenditure of state funds for park acquisition and have failed to show either personal financial injury or a specific interest in Mustang Island itself sufficient to give them standing to contest the acquisition. See *Flast* v. *Cohen*, 392 U.S. 83, 102–103.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1972.

---

[2] Petitioners assert that the decision below is in conflict with the decisions in *Nuesse* v. *Camp*, 385 F. 2d 694 (C.A.D.C.), and *Leuthold* v. *Camp*, 405 F. 2d 499 (C.A. 9), holding that state banking commissioners have standing to contest decisions of the United States Comptroller of the Currency with respect to the operations of national banks within their respective states. In those cases, the courts found that the complementary nature of state and national policies in the banking area gave the state officials, acting for the state, a sufficient interest to intervene in federal banking decisions. Here, far from contesting the federal action, the state had approved the acquisition of Mustang Island; a dissenting parks commissioner cannot in these circumstances claim to be asserting the interests of the state.

U.S. GOVERNMENT PRINTING OFFICE: 1972